

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 13Feb2001

Case No.: 1999-LHC-3058

DOL No.: 06-140794

In the Matter of:

BONNIE JEAN HURD,
Claimant

v.

DEPARTMENT OF ARMY/NAF,
Employer

RSK CO.,
Carrier

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest

APPEARANCES:¹

Joshua E. Santana, Esq.
For the Claimant

Douglas A. U'Sellis, Esq.
For the Employer

BEFORE: Robert L. Hillyard
Administrative Law Judge

DECISION AND ORDER

This proceeding involves a claim for compensation under the Longshore and Harbor Workers' Compensation Act, as amended,

¹ The Director, Office of Workers' Compensation Programs was not represented at the hearing.

33 U.S.C. §§ 901-950 (Act), and the regulations issued thereunder, 20 C.F.R. §§ 702.101-704.451. A formal hearing was held in Richmond, Kentucky, on April 11, 2000, where the parties were afforded full opportunity to submit evidence, to examine and cross-examine witnesses, and to argue issues of law.

The findings of fact and conclusions of law which follow are based on my observation of the demeanor of the witness who testified at the hearing and upon a careful analysis of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent case law.

I. STIPULATIONS²

The parties have stipulated, and I so find that:

1. Jurisdiction for this claim arises under the Act;
2. The Claimant filed a claim for compensation on November 8, 1995;
3. The claim was timely filed;
4. The date of the alleged injury/accident is August 13, 1991;
5. The accident/injury arose in the course and scope of employment;
6. The Claimant and the Employer were in an employee-employer relationship at the time of the alleged accident;
7. The Employer was advised of or learned of the injury on August 13, 1991;
8. The Employer was given timely notice of the injury;

² The Stipulations and Issues listed in this Decision are based on the Joint "Stipulations and Admissions" (JX 1). In this Decision, "CX" refers to the Claimant's Exhibits, "JX" refers to the Joint Exhibits, "EX" refers to the Employer's Exhibits, and "Tr." refers to the transcript of the April 11, 2000 hearing.

9. Notices of Controversion were filed on: July 3, 1993; January 16, 1996; August 12, 1996; and, June 11, 1997;
10. Notice of Controversion was timely filed;
11. The Employer filed a First Report of Injury (Form LS-202) on August 13, 1991;
12. The Claimant's average weekly wage at the time of the injury was \$252.61;
13. It is the Claimant's position that the effect of the work-related injury was to render her permanently and totally disabled;
14. The parties agree that the Claimant has suffered the following work-related disability:
 - (a) Temporary total disability from August 14, 1991 to September 23, 1991, from September 27, 1991 to October 20, 1991, and from May 21, 1992 to August 12, 1992; and,
 - (b) Temporary partial disability from August 13, 1992 to November 14, 1992.
14. Benefits have been paid to the Claimant for the following disabilities:
 - (a) Temporary total disability from August 14, 1991 to September 23, 1991, from September 27, 1991 to October 20, 1991, and from May 21, 1992 to August 21, 1992,³ at the rate of \$170.54 per week for 28.29 weeks, totaling \$3,630.12;⁴
 - (b) Temporary partial disability from August 13, 1992 to November 14, 1992, at the rate of \$57.20 per week for 12 weeks, totaling \$686.40; and,

³ Stipulation under § 16(a) of Stipulations and Admissions gives date of August 12, 1992.

⁴ The amount of \$170.54 per week for 28.29 weeks actually totals \$4,824.58 not \$3,630.12, as stated.

(c) Scheduled award of \$187.21 per week for 69.12 weeks, totaling \$12,939.96.

15. Medical benefits were paid, totaling \$13,548.03;
16. The Claimant reached maximum medical improvement on August 28, 1992;⁵
17. The Claimant returned to work in August 1992 on a part-time basis and returned to work full time in November 1992.
18. The Employer filed Notices of Final Payment or Suspension of Compensation Payments (Form LS-208) on: September 26, 1991; October 30, 1991; November 4, 1992; June 11, 1993; and, July 23, 1993; and,
19. The Employer does not claim relief under § 8(f) of the Act.

II. ISSUES

The unresolved Issues in this proceeding are:

1. Whether the Claimant has proven permanent, total disability;
2. Whether an intervening injury occurred; and,
3. Whether there was overpayment of the scheduled award.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Claimant, Bonnie Jean Hurd, was born on October 20, 1938, and was sixty-one years old at the time of the hearing (Tr. 11). She has an eleventh-grade education (Tr. 12). She is married to James Hurd and has no dependent children (Tr. 11).

Ms. Hurd was employed as a waitress by the Department of the Army at the Lexington Bluegrass Army Depot, the Employer, in August 1991. She worked there approximately four years prior to that time (Tr. 37). Hurd cooked, ran the food line, operated the cash registers, and rented golf carts (Tr. 15; EX 1). She sometimes worked as much as sixty hours per week (EX 1). Prior

⁵ As will be discussed later in this Decision, Dr. Lockstadt found that the Claimant reached maximum medical improvement on September 28, 1992, not August 28, 1992.

to her employment with the Employer, she held other waitress positions, worked in grocery and drug stores, cleaned houses and offices, and made candy (Tr. 13; EX 1). Hurd stocked products, ran cash registers, and made sandwiches while working at the grocery and drug stores (EX 1). She also worked for a family business selling coal and operating a junkyard (EX 1). She answered the telephones and loaded coal into trucks.

On August 13, 1991, Ms. Hurd was injured when she slipped on a wet surface while working for the Employer (Tr. 14). The floor had been mopped but no sign was posted warning that the surface was wet. Ms. Hurd explained:

... as soon as my foot hit the floor it twisted and threw me back in the corner and I hit my head and I went on down and when my leg twisted it was like fire running up the back of my leg, but my ankle was done turning at that time.

No one saw Hurd fall but several employees, including Hurd's supervisor, Martha Bowling (Daughtery), came over to where she was injured and took her to a clinic to have her leg examined. Hurd told the physicians at the clinic that her knee was hurting and after examination was told that her ankle was not broken. She did not go back to work that day and was told by the physicians to go home. Her knee continued to hurt and swell and she was off work for about a month (Tr. 15; EX 1).

A few weeks following the accident, Hurd saw Dr. Wheeler, who gave her Cortisone shots in her left knee (Tr. 15). Hurd said that she did not think Dr. Wheeler understood how she was hurt (Tr. 16). A friend recommended that Hurd see Dr. Lockstadt (EX 1). Dr. Lockstadt first saw Hurd in May 1992, at which time he took x-rays and told Hurd that she could either suffer with her knee condition or have orthopedic surgery (Tr. 16). Hurd underwent orthopedic surgery in May 1992. She stated that her knee was worse after the surgery, explaining that her knee continued to swell like it had prior to the surgery (Tr. 17).

Following the accident, Hurd worked off and on for about a year with reduced hours but her knee continued to give her problems. (Tr. 15). "They cut my hours and I went in 5 to 6 hours a day, but then when I would go home every evening my leg was in such bad shape" (Tr. 28). Her leg would swell from the "upper part all the way down to [her] ankle." Hurd stated that her work subsequent to the accident was supposed to be light duty, but it was not because there was not much light duty work to perform (Tr. 29). The Army base at which Hurd worked closed

in January 1993 (Tr. 35). The Employer offered her another position with Richmond Blue Grass Ordinance; however, it would have required one to two hours of driving per day (EX 1). They wanted her to file papers and work in the kitchen full time (forty hours per week). She told them that it would be too many hours for her leg, considering her need to elevate her leg after work each night. She said that she attempted working there three days but her knee was in too much pain and she would have to go home to elevate her leg. The Claimant then obtained a job at a restaurant for about one and one-half weeks where she prepared salads (Tr. 29, 38). Although the new employer initially allowed her to sit on a stool while she worked, they eventually told her she could no longer use a stool because other employees would also want to use a stool (Tr. 29). Hurd was on her feet eight hours per day, and the kitchen that she worked in had a concrete floor. Her leg began to swell again and she had to quit. Hurd waited a short period before looking for another job to give her leg time to get better (Tr. 30). She applied for a job as a switchboard operator and was asked if she had any handicaps. She was not hired for this position. She applied for a job as a hotel desk clerk but did not have the required computer experience. She later obtained a job at a golf course running a snack bar where she worked an eight-hour day and spent most of the time standing. She had to quit after about three months due to swelling in her leg. (Tr. 38-39). Her left knee was swollen from the ankle to the upper part of her leg and the pain was so great that she called Dr. Lockstadt, who recommended knee replacement surgery (Tr. 40).

The Claimant's knee continues to swell according to how much time she spends on her feet and the type of surface on which she walks (Tr. 17-18). She said that it often swells after fifteen or twenty minutes of being on her feet. Hurd has also had "continuous" swelling in her left ankle since the accident which also depends on the amount of time she spends on her feet (Tr. 20). She suffers "pretty constant" pain in her knee and the "large bone up above the knee" (Tr. 19). Dr. Lockstadt prescribes several pain relievers, including Darvoset and Percoset, which she takes as needed (Tr. 18). She takes less pain medication while at home walking on carpet than when walking on concrete. She is unable to drive or operate machinery while on the medication, as it sometimes makes her nauseous and dizzy (Tr. 19, 25). Hurd stated that she has not undergone any physical therapy for her knee (EX 1).

The Claimant stated that her knee sometimes gives out on her (Tr. 21). "It makes a little pop or click or a noise" and has caused her to fall. Hurd said that her physicians gave her a

cane several years ago to help with her knee condition and that she was given a knee brace in December 1999. She continues to wear the brace, primarily when she is going to be on her feet a lot (Tr. 22). Dr. Lockstadt has recommended knee replacement surgery but Hurd is going to see how the brace works before having surgery (Tr. 31).

Ms. Hurd stated that all of her jobs have required that she be able to walk, crouch, bend, twist, lift, flex her knees up and down, climb, squat, kneel, and stoop. She is unable to perform any of these activities because of her leg (Tr. 23-25). The Claimant is unable to stand or sit for extended periods of time because her "leg would get stiff and [she] probably couldn't get up" (Tr. 26). She did not think that she could give an employer what he or she would expect from her due to dizziness and nausea from the medicine and because "there is no job that you just go to for so many hours a day and just sit there" (Tr. 31). Hurd said that she has worked her whole life and would like to work if she could (Tr. 31). She has never held a position working with a computer and is unfamiliar with keyboards, switchboard, and email messaging (Tr. 26-27).

Hurd had no knee injury prior to her work for the Employer and has had no injury subsequent to August 1991 (EX 1). In 1995, Hurd filed a claim against Hill's department store following an accident in which she fell and hit her head. She underwent physical therapy due to headaches following the 1995 accident. She did not allege any injuries to her left knee and did not claim a loss of earning capacity. The claim was settled for approximately \$7,500.00. The Claimant receives \$329.00 per month in Social Security disability benefits due to her leg injury and because she is diabetic (Tr. 35). She was diagnosed with diabetes in 1993 (EX 1). Hurd takes medication for high blood pressure and diabetes and has had cataract surgery (Tr. 35; EX 1). She is five feet and six and one-half inches tall and weighs 214 pounds (EX 1). Hurd did not recall being interviewed with anyone on behalf of the Employer regarding job placement (Tr. 27).

Medical Evidence

1. Dr. James Templin examined the Claimant on March 27, 2000. He noted that Hurd complained of chronic left knee pain as a result of a work-related accident which occurred in 1991. Hurd was injured when she slipped and twisted her left leg and knee on a restroom floor which had been mopped. She immediately experienced pain in her left knee and ankle and was taken to a medical clinic where x-rays were taken. Hurd noted that little

attention was paid to her left knee at the clinic. She was unable to return to work for several days and continued to experience persistent knee pain and swelling when she did return. Hurd saw Dr. Wheeler for approximately one year. He injected Hurd's knee with Cortisone but such treatment did not provide any long-term benefit. Hurd then saw Dr. Lockstadt, who performed arthroscopic surgery on her knee on May 21, 1992. She was noted to have generalized osteoarthritic and degenerative changes to the knee. Following surgery she was released to work, but the pain persisted. Dr. Lockstadt advised that her only choice would be total knee replacement but she wanted to avoid that option. Dr. Lockstadt told her that her obesity would shorten the life of the prosthesis. After the base closed, Hurd attempted to relocate to another facility at reduced hours; however, her knee worsened and she eventually quit. She attempted several other positions but her knee problems worsened to the point that she was no longer able to perform her work duties. Hurd has no prior history of knee injury. She complained of constant dull aching pain in the left knee with swelling. The pain increases with any prolonged standing, walking, stooping, kneeling, squatting, crouching, climbing, or operating foot controls.

Dr. Templin examined the Claimant and interpreted an x-ray. He noted slight midline tenderness in the lower lumbar region, normal bilateral knee extension and hip flexion, and a reduction in knee flexion, straight leg raises, toe standing and plantar flexion. He interpreted the March 27, 2000 x-ray as showing advanced arthritic changes in the left knee with medial joint space narrowing and some patellofemoral joint space arthrosis. Dr. Templin diagnosed: (1) chronic left knee pain syndrome; (2) left knee arthritis; (3) left knee meniscal tear; and, (4) S/P left knee arthroscopic surgery with a partial medial meniscectomy. He opined that the Claimant's injury was the result of the 1991 work injury but was also caused in part by her natural aging process based on evidence of osteoarthritic changes of the left knee. The nature of the Claimant's work aggravated the effects of the natural aging process. Dr. Templin apportioned fifty percent of Hurd's impairment to the arousal of pre-existing dormant degenerative changes and fifty percent to the work-related injury. He stated that Hurd did not have an active impairment prior to the 1991 injury. Dr. Templin opined that the Claimant suffered from a fifteen percent impairment to the whole person. He concluded that she was unable to return to activities requiring "prolonged standing, walking, frequent bending, stooping, kneeling, crouching, climbing, or using foot controls for any extended time frame,"

and does not retain the physical capacity to return to the type of work she performed at the time of the injury (CX 2).

2. Dr. Daniel D. Primm, Jr., examined the Claimant on March 8, 2000. He noted that Hurd slipped at work on August 13, 1991, injuring her left knee and ankle. She was off work for one month then returned. She continued to have pain and swelling in the knee and ankle so she saw Dr. Wheeler. Eventually, Dr. Lockstadt performed arthroscopic surgery on her knee and told her that he found arthritis as well as torn cartilage. Hurd complained that she has had little, if any, improvement in her knee symptoms. She had swelling, pain with weightbearing, and also began to note some occasional aching in the left knee. Hurd had difficulty and pain with stair climbing, squatting, and kneeling. She had no symptoms in her right knee. Hurd began using a cane in 1997 which seemed to help. Dr. Primm noted a medical history positive for hypertension and diabetes and cataract surgery in both eyes. He reviewed Dr. Wheeler's October 14, 1991 report and reports by Dr. Lockstadt dated in 1992 and 1998. On physical examination, Dr. Primm found tenderness in the left knee. X-rays showed mild degenerative changes. He stated his impression: (1) pre-existing degenerative arthritis, left knee, with history of superimposed injury and arousal; (2) status post partial left medial meniscal tears superimposed on pre-existing degenerative changes; and, (3) obesity (5'6", 216 lbs). He recommended that the Claimant lose an additional sixty to seventy-five pounds before undergoing a knee replacement. He opined that her degree of impairment was twenty-four percent to the lower extremity which resulted in a ten percent impairment to the body as a whole. Dr. Primm attributed eight of the twenty-four percent lower extremity impairment to the 1991 accident and sixteen percent to the degenerative changes, which he felt were pre-existing based on Dr. Lockstadt's findings at the time of the 1992 surgery. Dr. Primm gave permanent restrictions of "no prolonged standing, probably for no more than 20 to 30 minutes at a time; no squatting, kneeling, or crawling; and only occasional stair or ladder climbing." He gave no restrictions on the use of her upper extremity and opined that she could operate hand or foot controls with no restrictions (EX 3).

Dr. Primm previously examined the Claimant on April 15, 1993. The Claimant stated that the surgery performed by Dr. Lockstadt helped to some degree but she still had problems including pain which was aggravated by prolonged standing or walking. She returned to a desk job after the surgery. Bent knee activities tended to bother her knee. On physical examination, Dr. Primm found tenderness over the left medial

patella and mild crepitus with range of motion of both knees. X-rays of both knees showed early or mild narrowing of the medial joint line left knee and some small osteophytes at the medial aspect of the right tibia as well as some early narrowing of the right medial joint line. There was also some spurring at the tibial spines noted in both knees. Dr. Primm stated his impression as pre-existing degenerative arthritis, left knee, with history of superimposed injury, and obesity (5'6", 232 lbs.). He attributed the arthritis to obesity and stated that she "had a superimposed injury and arousal as well as a partial tear of the medial meniscus." He did not think that she should have knee replacement surgery because of her age and size. Rather, Dr. Primm recommended weight loss and conservative treatment including anti-inflammatory medication. He opined that "she could work but should work in a sedentary type position which would not involve any prolonged standing and no stair or ladder climbing." He would not limit the number of hours she worked in a sedentary type occupation. Dr. Primm concluded that Hurd's impairment to the lower extremity was twenty-four percent, which translates to a ten percent impairment to body as a whole. He opined that two-thirds of this would represent an aggravation or activation of a significant pre-existing degenerative problem in the knee (EX 2).

3. Dr. Robert P. Goodman examined Hurd on July 1, 1996. He noted that she injured her left knee when she slipped and fell at work and continued to have pain walking in the yard, on unlevel ground, and up and down steps. She last worked in August 1995 but had to quit due to pain. Physical examination showed a slight limp and some left knee pain and tenderness. He noted that she could not squat due to pain. X-rays showed degenerative changes in the lumbar spine and each side medial joint line and beneath patella. Dr. Goodman diagnosed: (1) pre-existing osteoarthritic changes both knees, status post arthroscopic menisectomy and debridement of the left knee; and, (2) possible arousal of changes, lumbar spine. He noted that five years after the injury the operative report described extensive degenerative changes expected in a patient of this age. Dr. Goodman recognized knee problems but stated that he was uncertain whether some of this was the result of problems in her lower back or lumbar spine. He would not recommend surgery, but recommended weight loss and outside walking and exercise to see if condition will improve. He opined that her main problem was her age and normal arthritic changes which were present in both knees and were not caused by the work accident. The Claimant was capable of some lighter activity, walking, some sedentary work, "but of course marked limitations as far as

stair climbing, stooping, bending." Dr. Goodman opined that the Claimant's work "injury tore her meniscus, aroused some degenerative changes and probably produced an impairment of 10% to the lower extremity, 4% to the whole body, half due to arousal, that the other problems are simply normal aging process related to the arthritis and that actually, most restrictions are related to that." (EX 4).

In a separate Work Restriction Evaluation report dated July 1, 1996, Dr. Goodman opined that the Claimant could intermittently sit four hours per day, walk and stand two hours per day, lift between ten and twenty pounds and bend for one hour per day, and could not squat, climb, kneel, or twist. He stated that she had no hand restrictions but should not perform pushing and pulling activities. She could reach or work above her shoulder and could operate foot controls. Hurd could not operate a car, truck, or other type of motor vehicle. She had no cardiac, visual, or hearing limitations, no restrictions concerning heat, cold, dampness, height, temperature changes, high speed working, or exposure to dust, fumes, or gases, and had no interpersonal restrictions effected because of any neuropsychiatric condition. The Claimant could work eight hours per day and would not need any vocational rehabilitation services such as testing, counseling, or training. Dr. Goodman opined that Hurd reached maximum medical improvement. He noted that her "limitations are due to arthritis" (EX 4).

4. Dr. Harry Lockstadt, the Claimant's treating physician, first examined Ms. Hurd on May 11, 1992, at which time he noted that she twisted her left knee and ankle when she slipped on a wet floor in August 1991. Dr. Lockstadt noted that the Claimant's ankle gradually improved but she continued to have left knee pain on the inside of the knee towards the medial aspect. She had difficulty twisting her knee, climbing stairs, kneeling, and crouching, and her left leg swells if she is on her feet for prolonged periods. Hurd was treated with anti-inflammatory medication, Cortisone injections, and two months of rest. She never had any trauma to her knee prior to the 1991 accident. Hurd had an occasional ache in her right knee "which she just shakes off and keeps going." On physical examination, Dr. Lockstadt noted that the knee was not swollen, range of motion was full and functional, and there was some tenderness along the medial jointline. Dr. Lockstadt's assessment was medial compartment degeneration. He stated that when the Claimant twisted her knee, she "most likely damaged the articular surface and the meniscus on the medial compartment." He stated that this was a mechanical problem, for which therapy and anti-inflammatory medicine would not likely help her, and

recommended that the Claimant undergo an arthroscopic evaluation and possible arthroscopic surgery (CX 1; EX 8).

Dr. Lockstadt, on May 21, 1992, performed an arthroscopic medial meniscectomy with debridement secondary to arthritic changes of the articular surface of the femur, the tibia, and the patellofemoral compartments. His pre- and post-operative diagnoses were compartment degeneration and meniscal tear. He noted that the Claimant twisted her left knee at work and suffered from swelling, grinding, crepitus, and night pain (CX 1; EX 8).

In a letter dated May 29, 1992, Dr. Lockstadt stated that at the time of the Claimant's surgery, "there was no evidence that she had a tear of the medial meniscus, and significant degeneration from her tear." He stated that this resulted in some damage onto the articular surface of both the femur and the tibia. "At arthroscopic surgery, the meniscal tear was resected, and the damage to the articular surface was smoothed off." Dr. Lockstadt felt that the removal of the damage to the meniscus would alleviate Hurd's pain but that eventually there would be gradual deterioration, at which time the Claimant may require knee replacement. He recommended continued walking and exercises and stated "the way she is today, I don't think she is quite ready to return to work" (CX 1; EX 8).

Dr. Lockstadt saw Ms. Hurd on June 10, 1992. He stated that the pain at the posterior aspect of Hurd's knees at the time of the injury was "essentially resolved," and the tenderness in the front of her knee which was present at the time of the injury was still present. Dr. Lockstadt noted that the arthroscopy showed a torn meniscus in the posterior medial aspect of the knee and significant damage to the undersurface of the kneecap. He injected Cortisone into the Claimant's knee and recommended that she not go back to work or be on her feet all day (CX 1; EX 8).

Dr. Lockstadt saw the Claimant on July 15, 1992, at which time she was suffering "significant pain" in her left knee. Arthroscopic notes showed that Hurd suffered significant medical compartment degeneration and minimal lateral degeneration. Dr. Lockstadt did think that he would release her for work in the near future. "She cannot work, her options therefore will then be either early retirement, or proximal to the osteotomy, or knee replacement" (EX 8).

In a letter dated July 22, 1992, Dr. Lockstadt wrote that he was contacted by the Employer and informed that there was a

clerical position available for the Claimant. Dr. Lockstadt advised Hurd that she should be on her feet no more than fifteen to thirty minutes per hour, "minimizing twisting and turning and lifting through the knee." By letter dated August 5, 1992, Dr. Lockstadt stated that Hurd should minimize twisting through the knee, walking, kneeling, and crouching. She could do light duty work such as paperwork. He opined that it was within her capabilities to be on her feet approximately twenty minutes per hour (CX 1).

On August 5, 1992, Dr. Lockstadt wrote that the Claimant could perform light duty work such as paperwork but he recommended that she minimize walking and twisting through the knee and should not be on her feet more than twenty minutes per hour (EX 8).

Dr. Lockstadt saw the Claimant on September 28, 1992. He stated that he encouraged her to continue activities as tolerated but it was just a matter of time before the knee would show continuing deterioration and increasing pain. Dr. Lockstadt said he would continue to treat her with Cortisone injections but she would likely require a knee replacement. "As she has both patellofemoral arthritis and medial compartment arthritis, it is questionable if a proximal tibia osteotomy would help her." In a letter dated September 28, 1992, Dr. Lockstadt stated that the Claimant reached maximum medical recovery.

I do not believe that she will ever return to full time duties, due to her knee pathology and injury. I think she will likely remain at a level of working between 4 and 5 hours per day at maximum, and I don't believe that will go forever, either.

He recommended minimization of walking and twisting through the knee, limited to between twenty and thirty minutes per hour, and minimization of kneeling and crouching. "If that type of work is not available, then she should be rated for maximum medical improvement and settlement made" (CX 1; EX 8).

Dr. Lockstadt saw Hurd on December 18, 1992, at which time he noted symptoms of daily pain along the medial aspect of knee, difficulty with kneeling, crouching, and climbing stairs, and that twisting through the knee caused pain. X-rays showed some mild medial joint space loss and patellofemoral degeneration and arthroscopic evaluation demonstrated medial meniscus tear, some secondary arthritis on the articular surface of the femur and tibia, and some patellofemoral arthritis. Dr. Lockstadt opined

that her capabilities were limited to standing on her legs approximately fifteen minutes before rest is required, and she should not kneel, crouch, or climb stairs on a repetitive basis. He concluded that she could return to a position within these parameters but it was "doubtful" if she could do anything beyond that. He found the Claimant's lower extremity impairment to be twenty-two percent and that she had a nine percent impairment of the whole person (CX 1; EX 8).

In a letter dated February 11, 1993, Dr. Lockstadt stated that Ms. Hurd suffered from severe arthritis of the medial side of her left knee. He noted that weight bearing tends to aggravate her pain and increase symptoms. "It is my professional opinion that it is highly unlikely that after reviewing her job description, that she probably only would be able to work approximately five hours a day within her restrictions" (CX 1).

Dr. Lockstadt saw the Claimant on June 23, 1993, at which time he noted continuing left knee pain localized to the medial side of the knee, associated with grinding and crepitus and swelling, and some patellofemoral and medial compartment pain. He noted that she lost twenty pounds which he thought would help her. He recommended knee replacement surgery but would like to put it off as long as possible (CX 1; EX 8).

Dr. Lockstadt saw Hurd on December 3, 1993, at which time he noted that her left knee continued to give her pain several days per week but she controlled it with Voltaren. She did not take full doses and some days did not require medication. Physical examination showed tenderness along the medial joint line and patellofemoral joint. She lost weight. Dr. Lockstadt stated his assessment as "left knee arthritis." He noted that the Claimant wanted to return to work eight hours per day, but stated that he was not too optimistic that she would be able to work on her feet all day. He released her to work "within her capabilities" (CX 1; EX 8).

Dr. Lockstadt saw the Claimant for follow-up on October 5, 1995, at which time he noted continued pain in her left knee. X-rays showed medial joint space narrowing and some patellofemoral joint space arthrosis. Dr. Lockstadt noted that she received Social Security benefits and was only experienced at manual labor. "If she was to find a job where she could sit most of the time, then she would be able to do this, however ambulation would be a problem for her." He stated that he would like to delay a total knee replacement and prescribed medication (CX 1; EX 8).

On August 28, 1997, Dr. Lockstadt saw the Claimant "for follow-up from her knee arthritis." He said that all he could offer her was Hyalgan injections and total knee replacement. He did not think that she would be able to return to any type of employment that required any excessive standing or walking. Dr. Lockstadt noted that she was only experienced in labor type work and had no other training (EX 8).

Dr. Lockstadt examined the Claimant on February 25, 1998, at which time he noted an increase in pain and progression of symptoms. He opined that her treatment would require ongoing arthritis medication and probable knee replacement. Based on history and previous findings, Dr. Lockstadt did not relate her knee arthritis to the 1991 injury, but stated that "we will continue to support her with her workman's comp claim associated with this" (EX 8).

Dr. Lockstadt saw Hurd on July 21, 1999. He noted that she was able to ambulate only fifteen to twenty minutes per hour and had pain and swelling of the knee if she was up too long. She required intermittent use of a cane and stated that she was not ready for an operation (CX 1).

In a Status Report dated July 28, 1999, Dr. Lockstadt restricted the Claimant to a "sit down job only" and noted that she should avoid bending, stooping, crouching, and stairs (CX 1).

5. Dr. Eric C. Wilson issued a Surgical Pathology Report dated May 21, 1992 based on his examination of a portion of the Claimant's torn mediscus cartilage. He noted that it was consistent with torn medial meniscus of the left knee (CX 1; EX 8).

6. Dr. Wheeler examined the Claimant on October 14, 1991 and November 1, 1991. He noted in the October 1991 report that Hurd fell and injured her left knee and ankle when she slipped and fell at work. She was off work for nine or ten days then returned for four days, "but had swelling of her entire left lower extremity and has not worked in the entire month of September and the past two weeks of October." Dr. Wheeler noted that she "has gotten better" but had some soreness in her knee. He noted that she was significantly overweight but had no swelling in her knee. He interpreted an x-ray as showing no significant changes. Dr. Wheeler stated his impression as "traumatic synovitis left knee." He injected her knee with Aristocort and stated that she should be off work until October 21, 1991. In the November 1991 report, Dr. Wheeler stated that the knee improved after the injection but Hurd still had some

symptoms. He prescribed Voltaren and advised her to lose weight and told her to return in six weeks if problems persisted (CX 1).

Vocational Evidence

The record contains several Labor Market Survey reports by Donald Follensbee, Senior Case Manager for Concentra Managed Care, Inc. In a report dated November 26, 1996, Mr. Follensbee identified thirteen positions which he found to be within the Claimant's work restrictions as given by Dr. Goodman on July 1, 1996 (EX 5). Follensbee, in a July 11, 1997 report, identified eleven job openings (EX 6). On October 13, 1997, Follensbee listed numerous job openings dated between September 28, 1992 to October 30, 1996 which were found in the Lexington Herald/Leader classified ads (EX 7). For each date listed, Follensbee found approximately three to five job openings that appeared to meet Dr. Goodman's restrictions. Five general job titles were found to be within the Claimant's work restrictions and skills: (1) receptionist; (2) front desk clerk; (3) telephone operator/switchboard operator; (4) sedentary cashier; and, (5) customer order clerk. The job descriptions for these positions are as follows:

1. Front Desk Clerk

Duties: (1) registering and assigning rooms to guests; (2) sorting mail and messages; (3) transmitting and receiving messages using equipment such as telephones, fax machines, and switchboards; (4) answering inquiries pertaining to hotel services; (5) record-keeping; (6) computing bills and collecting payments from guests; (7) making and confirming reservations; (8) selling small items such as tobacco and newspapers; and, (9) posting room and service charges to cash book or register.

Physical capabilities: standing, sitting, walking periodically during the day with maximum standing of one-half hour to one hour during busy times. A stool can be provided if needed to sit primarily. No lifting over five pounds and no bending, stooping, or activities of the like.

2. Telephone Operator/Switchboard Operator

Duties: (1) operate telephone system to relay incoming, outgoing, and interoffice calls; (2) pushes

switch keys to make connections and relay calls; (3) keep record of calls and relay messages for guests as needed.

Physical capabilities: job is sedentary with three breaks during the work hours. Two 15 minute breaks and one 1/2 hour dinner break. No lifting, bending, stooping, or other such activities.

3. Customer Order Clerk

Duties: (1) process orders for merchandise by telephone using computer terminal; (2) edit orders received for prices and nomenclature; (3) inform customers of prices, shipping dates, and any additional information; (4) enter data into computer to determine total cost for customer; and, (5) check inventory.

Physical capabilities: job is sedentary with three breaks during the work hours. Two 15 minute breaks and one 1/2 hour dinner break. No lifting, bending, stooping, or other such activities.

4. Medical Receptionist

Duties: (1) receive calls, determine nature of business, and direct callers to destination; (2) schedule appointments and take messages; (3) answer inquiries; and, (4) variety of simple clerical duties.

Physical capabilities: sedentary mostly but able to stand and walk occasionally during the work hours. No lifting over five pounds, no bending, stooping, or other such activities.

5. Sedentary Cashier

Duties: (1) receive funds from customers and record monetary transactions; (2) complete credit card transactions; and, (3) count money to verify amounts, issue receipts and change.

Physical capabilities: job is mainly sedentary but able to stand and walk as needed. No lifting over five pounds, no bending, stooping, or other such activities.

Dr. Goodman found all of the positions identified by Mr. Follensbee in the 1996 and 1997 surveys to be within the Claimant's work restrictions (EX 5-7). The positions were within a thirty-five mile radius of Winchester, Kentucky, where the Claimant resides. It was noted that full-time positions range from thirty-five to forty hours per week.

In a Labor Market Research report dated April 10, 2000, Mr. Follensbee identified sixteen job openings which he found within the restrictions imposed by Dr. Primm on March 8, 2000 (EX 9). The survey was conducted within a fifty mile radius of Winchester, Kentucky. The job reviewed for this survey were: (1) switchboard operator; (2) medical receptionist; and, (3) customer order clerk. The duties and physical capabilities for these positions are similar to those listed above.

IV. DISCUSSION AND APPLICABLE LAW

Nature of Disability

Under the Act, "disability" is defined as the "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or other employment." 33 U.S.C. § 902(10). Generally, disability is addressed in terms

of its nature, permanent or temporary, and its extent, total or partial. A claimant bears the burden of establishing both the nature and extent of his or her disability. See *Trask v. Lockheed Shipbuilding and Construction Co.*, 17 BRBS 56, 59 (1985).

Courts have devised two legal standards to determine whether a disability is permanent or temporary in nature. Under one standard, a disability is considered to be permanent where the underlying condition has reached the point of maximum medical improvement. See *Trask*, 17 BRBS at 60. Thus, an irreversible condition is permanent. See *Drake v. General Dynamics Corp., Electric Boat Division*, 11 BRBS 288, 290 n.2 (1979). Under another standard, a permanent disability is one that "has continued for a lengthy period and . . . appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period." *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968), cert. denied, 394 U.S. 976 (1969); *Care v. Washington Metro Area Transit Authority*, 21 BRBS 248, 251 (1988). In such cases, the date of permanency is the date that the employee ceases receiving treatment with a view towards improving his or her condition. See *Leech v. Service Engineering Co.*, 15 BRBS 18, 21 (1982).

Three physicians gave opinions with respect to the degree of Hurd's impairment. Dr. Lockstadt, the Claimant's treating physician since May 1992, opined in a letter dated September 28, 1992 that Hurd reached "maximum medical recovery" and did not think that she would ever be able to return to full-time work duties due to her knee pathology and the 1991 injury. In several reports dated subsequent to September 1992, Dr. Lockstadt continued to place the Claimant on work restrictions. Dr. Lockstadt's opinion is reasoned, documented, and supports a finding of permanent disability. See *Trask*, 17 BRBS at 60. His opinion is entitled to substantial weight.

Dr. Goodman examined Hurd on July 1, 1996. In a Work Restriction Evaluation report dated July 1, 1996, he opined that she reached maximum medical improvement and limited the Claimant's work activities. I find that Dr. Goodman's opinion supports a finding of permanent disability. See *Trask*, 17 BRBS at 60.

Dr. Primm examined the Claimant on March 8, 2000, at which time he gave "permanent" restrictions of no prolonged standing, probably for no more than 20 to 30 minutes at a time; no

squatting, kneeling, or crawling, and only occasional stair or ladder climbing" (emphasis added). Dr. Primm did not find "maximum medical improvement," but his opinion supports a finding that the Claimant's disability is permanent in nature. See *Watson*, 400 F.2d at 654; *Care*, 21 BRBS at 251.

The record also contains reports by Drs. Templin, Wilson, and Wheeler; however, these physicians failed to give opinions as to the degree of Hurd's impairment. Based on the opinions of Drs. Lockstadt, Goodman, and Primm, I find the Claimant's impairment to be permanent in nature and that she reached maximum medical improvement on September 28, 1992.⁶

Extent of Disability

Once the nature of the disability has been established, the extent of disability must also be established. The extent of disability is an economic concept as well as a medical one. See *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981); *Quick v. Martin*, 397 F.2d 644, 648 (D.C. Cir. 1968). In order for a claimant to receive an award of compensation, the evidence must establish that the injury resulted in a loss of wage-earning capacity. See *Fleetwood v. Newport News Shipbuilding and Dry Dock Co.*, 776 F.2d 1225, 1229 (4th Cir. 1985); *Sproull v. Stevedoring Services Of America*, 25 BRBS 100, 110 (1991). A claimant establishes a *prima facie* case of total disability by showing that he or she cannot perform his or her usual work because of a work-related injury. The claimant need not establish that he or she cannot return to any employment, only that he or she cannot return to his or her former employment. See *Elliot v. C & P Tel. Co.*, 16 BRBS 89 (1984). Once a *prima facie* case is established, the claimant is presumed to be totally disabled, and the burden shifts to the employer to prove the availability of suitable alternate employment. See *Turner*, 661 F.2d at 1038; *Trans-State Dredging v. Benefits Review Bd. [Turner]*, 731 F.2d 199, 200-02 (4th Cir. 1984); *Elliott*, 16 BRBS at 92. If the employer establishes the existence of such employment, the employee's disability is treated as partial rather than total. Total disability becomes partial on the earliest date that the employer establishes suitable alternate employment. See *Palombo v. Director, OWCP*, 937 F.2d 70, 73 (2d Cir. 1991); *Rinaldi v. General Dynamics*

⁶ As previously noted, the parties stipulated that the Claimant reached maximum medical improvement on August 28, 1992. However, the medical evidence shows that the correct date is September 28, 1992.

Corp., 25 BRBS 128 (1991). However, the claimant may rebut the employer's showing of suitable alternate employment, and thus retain entitlement to total disability benefits, by demonstrating that he or she diligently sought but was unable to obtain such employment. See *Palombo*, 937 F.2d at 73; *Director, OWCP v. Berkstresser*, 921 F.2d 306, 312 (D.C. Cir. 1991).

The degree of the claimant's disability, total or partial, is determined not only on the basis of his physical condition, but also on other factors, such as age, education, employment history, rehabilitative potential, and the availability of work. Thus, it is possible under the Act for a claimant to be deemed totally disabled even though he or she may be physically capable of performing certain kinds of employment. See *Turner*, 661 F.2d at 1038.

In determining whether the Claimant has established that she cannot perform her usual employment, I must compare her medical restrictions with the specific requirements of her usual employment. See *Curit v. Bath Iron Works Corp.*, 22 BRBS 100 (1988); *Mills v. Marine Repair Serv.*, 21 BRBS 115, on recon., 22 BRBS 335 (1988); *Carrol v. Hanover Bridge Marine*, 17 BRBS 176 (1985); *Bell v. Volpe/Head Constr. Co.*, 11 BRBS 377 (1979). At the time of Hurd's 1991 injury, she was working as a waitress for the Lexington Bluegrass Army Depot. In addition to her duties as a waitress, she cooked, ran the food line, operated cash registers, and assisted with golf cart rentals. Her position required her to walk, crouch, bend, twist, lift, flex her knees up and down, climb, squat, kneel, and stoop.

Four physicians gave opinions with respect to the extent of the Claimant's disability. Drs. Wilson and Wheeler did not give opinions on this issue.

As discussed, Dr. Lockstadt has treated the Claimant since 1992. On September 28, 1992, he opined that Hurd reached "maximum medical recovery" and did not think that she would ever be able to return to full-time work duties due to her knee pathology and the 1991 injury. "I think she will likely remain at a level of working between 4 and 5 hours per day at maximum, and I don't believe that will go forever, either." Dr. Lockstadt recommended minimization of walking and twisting through the knee, limited to twenty to thirty minutes per hour, and minimization of kneeling and crouching. He most recently examined Hurd in July 1999, at which time he opined that she was able to ambulate only fifteen to twenty minutes per hour and has pain and swelling of the knee if she is up too long. Dr. Lockstadt restricted her to a "sit down job only" and opined

that she should avoid bending, stooping, crouching, and climbing stairs. He stated that she would continue to require the use of a cane and pain medication and will eventually need a total knee replacement.

Dr. Goodman examined Hurd in July 1996, at which time he opined that she could intermittently sit four hours per day, walk and stand two hours per day, lift between ten and twenty pounds, and bend for one hour per day, and cannot squat, climb, kneel, or twist. She could not operate any motor vehicles. He gave no hand restrictions but stated that Hurd should not perform pushing or pulling exercises.

Dr. Templin examined Hurd on March 27, 2000 and opined that she suffered from a fifteen percent impairment to the whole person and was unable to return to activities requiring "prolonged standing, crawling, frequent bending, stooping, kneeling, crouching, or using foot controls for any extended time frame." He stated that she did not retain the physical capacity to return to the type of work she performed at the time of the injury.

Dr. Primm examined the Claimant in 1993 and again in March 2000. Based on the 1993 examination and x-rays taken at that time, he opined that she could work "but should work in a sedentary type position which would not involve any prolonged standing and no stair or ladder climbing." He did not limit the hours that she could work in a sedentary position. Dr. Primm concluded that Hurd had a twenty-four percent impairment to the lower extremity and a ten percent impairment to the body as a whole. Based on the March 2000 examination, Dr. Primm gave permanent restrictions of no prolonged standing (no more than twenty to thirty minutes at a time), no squatting, kneeling, and crawling, and only occasional stair or ladder climbing. He gave no restrictions on upper body use or the operation of hand or foot controls.

Based on the Claimant's testimony, I find that the activities which Drs. Lockstadt, Goodman, Templin, and Primm advised her to avoid would be required in her former position as a waitress. Accordingly, I find that she has established a *prima facie* case of total disability by showing that she cannot perform her usual work because of a work-related injury.

Because the Claimant has established a *prima facie* case of total disability, the burden shifts to the Employer to rebut this finding. In order to overcome the presumption of total disability, an employer must demonstrate the availability of

employment that the claimant could perform. A showing of suitable alternate employment must account for a claimant's age, background, employment history, and physical and intellectual capabilities. See *Turner*, 661 F.2d at 1042-43. In addition, such employment must be a position within the claimant's community that the claimant realistically could secure with a diligent effort. *Id.* While the employer need not specifically place the claimant in an actual job, it must establish the precise nature, terms, and availability of the job opportunity. See *Turner*, 731 F.2d at 201; *Thompson v. Lockheed Shipbuilding & Constr. Co.*, 21 BRBS 94, 97 (1988). The presumption of total disability continues until the employer satisfies this burden.

The medical evidence establishes that, as a result of her injuries, the Claimant is able to work only under certain restrictions. I place substantial weight on the opinion of Dr. Lockstadt, the Claimant's treating physician, who stated that Hurd could work at a "sit down job only," should not ambulate more than fifteen to twenty minutes per hour, and should not perform any bending, stooping, crouching, or climbing stairs. She will have pain and swelling of the knee if she is up too long and will continue to require the use of a cane and pain medication. Dr. Lockstadt stated that "she will likely remain at a level of working between 4 and 5 hours per day at maximum" and does not believe that will continue forever either. Drs. Primm, Templin, and Goodman also opined that the Claimant should avoid certain activities such as prolonged standing, squatting, kneeling, twisting, and crawling. Dr. Goodman further stated that the Claimant should not operate any motor vehicles. I find that any attempt by the Employer to establish suitable alternative employment must account for these restrictions.

The Employer has submitted the results of three Labor Market Surveys. The Employer acknowledged in its Brief that no complete vocational evaluation was performed, as the Claimant was never personally interviewed by a vocational expert. The Surveys were conducted based on the medical restrictions contained in the record. In the most recent Survey report, Donald Follensbee from Concentra Managed Care, Inc., identified six job openings within the restrictions imposed by Dr. Primm on March 8, 2000, that are within a fifty-mile radius of Winchester, Kentucky. The job titles reviewed for this Survey were: (1) switchboard operator; (2) medical receptionist; and, (3) customer order clerk. In the October 13, 1997 Survey report, Follensbee defined five general job titles, including the three listed above, which were found to be within the

Claimant's work restrictions as imposed by Dr. Goodman on July 1, 1996.

The physical capabilities required for the medical receptionist position include being "able to stand and walk as needed." The Survey report does not specifically state how much walking and standing could potentially be "needed." Dr. Lockstadt opined that the Claimant could have a "sit down job only," and stated that she would only be able to ambulate fifteen to twenty minutes per hour before she experiences pain and swelling of the knee. The physical capabilities for the switchboard operator and customer order clerk positions are also generally defined and do not specifically address how much time the Claimant would need to spend on her feet. Moreover, although these positions are defined as "sedentary," the Claimant testified that she would be unable to sit for extended periods of time because her "leg would get stiff and [she] probably couldn't get up." Finally, the wages for the positions listed in the Survey reports and the reference to "full time" hours for all three of the positions listed above suggest that these positions would require full-time employment commitment. Dr. Lockstadt has found that the Claimant could work four to five hours per day maximum and would eventually not be able to work that much.

In addition to physical capabilities, a showing of suitable alternate employment must also account for a claimant's age, background, employment history, and intellectual capabilities. See *Turner*, 661 F.2d at 1042-43. The switchboard operator and customer order clerk positions require that the Claimant be able to operate certain equipment such as computers and switchboards. The Claimant testified that she has no experience with either computers or switchboards and is unfamiliar with keyboards and email messaging. Hurd is sixty-one years old and has an employment history which is limited to labor type work. She has had no additional training or experience. Moreover, she has attempted to obtain positions requiring the use of computers and switchboards, but was declined. Hurd stated that she applied for a position as a hotel desk clerk subsequent to her work for the Employer, but was told that they needed someone with computer experience. She also applied for a position as a switchboard operator, was asked if she had any disabilities, and was never hired.

The Employer noted in its Brief that the Claimant returned to light duty work following the August 1991 accident and eventually progressed to regular full-time work with the Employer and continued in this capacity until January 1993, at

which time her employment ceased due to closure of the base. According to Hurd, even with reduced hours, her knee would swell and continued to give her problems. "They cut my hours and I went in 5 to 6 hours a day, but then when I would go home every evening my leg was in such bad shape." Following the closure of the base, the Employer offered Hurd another position at a different location. The Claimant spent one to two hours per day driving to and from the new location. She attempted working there three times but her knee was in so much pain that she would have to go home and elevate her leg. Subsequent to her work with the Employer, Hurd held two other restaurant/food-oriented positions, both of which she quit due to pain and swelling in her leg. She testified that she continues to have pain and swelling in her leg depending on how much time she spends on her feet and the type of surface on which she walks. She takes medication for the pain and is unable to drive or operate motor machinery while on the medication due to nausea and dizziness.

Based on the Claimant's physical restrictions, employment background, age, and testimony, I find that the jobs identified in the Labor Market Surveys do not fit within Ms. Hurd's limitations or skills, and that the Employer has failed to establish the availability of suitable alternate employment.

Intervening Injury

Whether Hurd sustained an intervening injury due to a slip and fall accident at a Hill's store in 1995 was listed as an issue in the Pre-Hearing Statement and in the Joint Stipulations and Admissions. The Employer stated in its Brief, however, that the medical evidence fails to show that the fall caused any worsening of the Claimant's knee condition and waived any argument with respect to this issue. Based upon a review of the record, I find that the evidence fails to show that the 1995 accident caused an intervening injury with respect to the Claimant's knee condition.

Average Weekly Wage

The parties stipulated and I so find that the Claimant's average weekly wage at the time of the injury was \$252.61.

Overpayment of Scheduled Award

Section 8(c)(2) provides for permanent partial disability compensation for lost use of a leg. The parties stipulated that a scheduled award pursuant to § 8(c)(2) was paid to the Claimant

and was calculated on the basis of 69.12 weeks at \$187.21 per week for a total of \$12,939.96. The Employer argues that based on an average weekly wage of \$252.61, the correct weekly rate should have been \$168.41, yielding a payment of \$11,640.50. Thus, the scheduled award in this case was overpaid. I agree with the Employer and find that there has been an overpayment in the amount of \$1,299.46.

Medical Benefits

Section 7(a) of the Act provides that an employer shall furnish medical and surgical treatment for an employee for such period as the nature of the injury or the process of recovery may require. Medical benefits are not compensation and are not time-barred under § 13 of the Act. See *Mayfield v. Atlantic & Gulf Stevedores*, 16 BRBS 228, 230 (1984). To be entitled to medical benefits under § 7, a claimant need not establish that the injury has caused a reduction in wage-earning capacity. Rather, a claimant need only establish that the injury is work related. See *Winston v. Ingalls Shipbuilding, Inc.*, 16 BRBS 168, 174 (1984). Any expense claimed by the employee must be both reasonable and necessary. The parties stipulated that the Claimant has already been paid \$13,548.03 in medical benefits. I find that she is entitled to benefits for any additional medical treatments received as a result of her work injury.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and upon the entire record, I issue the following compensation order. The specific dollar computations of the compensation award shall be administratively performed by the District Director.

It is, therefore, ORDERED that:

1. The Employer, Department of Army/NAF, pay to the Claimant, Bonnie Jean Hurd, compensation for her temporary total disability from August 14, 1991 to September 23, 1991, from September 27, 1991 to October 20, 1991, and from May 21, 1992 to August 12, 1992, based upon an average weekly wage of \$252.61, such compensation to be computed according to § 8(b) of the Act.

2. The Employer, Department of Army/NAF, pay to the Claimant, Bonnie Jean Hurd, compensation for her temporary partial disability from August 13, 1992 to September 27, 1992, based upon an average weekly wage of \$252.61, such compensation to be computed according to § 8(e) of the Act.

3. The Employer, Department of Army/NAF, pay to the Claimant, Bonnie Jean Hurd, compensation for her permanent total disability commencing September 28, 1992, based upon an average weekly wage of \$252.61, such compensation to be computed according to § 8(a) of the Act.

4. The Employer shall furnish such reasonable, appropriate, and necessary medical care and treatment as the Claimant's work-related injury referenced herein may require, subject to the provisions of § 7 of the Act.

5. The Employer shall receive credit for all amounts of compensation previously paid to the Claimant as a result of her injury.

6. The Claimant's attorney shall file, within (30) days of receipt of this Decision and Order, a fully supported and fully itemized fee petition, sending a copy thereof to Employer's counsel who shall have twenty (20) days to file objections. Twenty C.F.R. § 702.132.

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ROBERT L. HILLYARD
Administrative Law Judge